



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2023-0039]

RIN 1625-AA00

### Safety Zone; Charleston Harbor, Charleston, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters of the Cooper River, Charleston Harbor, and Atlantic Ocean at the Charleston Harbor Entrance and Approach, Charleston Harbor, within a 100-yard radius of the vessel USNS Gordon and all towing vessels supporting its operations. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the dead ship movement of USNS Gordon from the Naval Weapons Station, Joint Base Charleston Transportation Core (TC) Dock or Wharf Alpha through the Charleston Harbor Entrance Channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Charleston.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through January 24, 2023. For the purposes of enforcement, actual notice will be used from January 12, 2023, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0039 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related

Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST1 Thomas J. Welker, Sector Charleston, Waterways Management Division, U.S. Coast Guard; telephone (843) 740-3186, email [thomas.j.welker@uscg.mil](mailto:thomas.j.welker@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard lacks sufficient time to provide for a comment period and then consider those comments before issuing the rule since this rule is needed by January 12, 2023. It would be contrary to the public interest since immediate action is necessary to protect the safety of the public, and vessels transiting the waters of the Cooper River, Charleston Harbor, and the Atlantic Ocean at the Charleston Harbor Entrance and Approach during the dead ship movement of USNS Gordon.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action

is needed to minimize the potential safety hazards associated with the dead ship movement of the USNS Gordon.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the dead ship movement and berthing of USNS Gordon on January 12, 2023 (or on a contingency date prior January 25, 2023), will be a safety concern for anyone within a 100-yard radius of vessel and any towing vessels supporting the operation. This rule is needed to protect personnel, vessels, and the marine environment during the dead ship movement of the USNS Gordon while outbound from berthing at the Naval Weapons Station, Joint Base Charleston Transportation Core (TC) Dock or Wharf Alpha, on the Cooper River in Goose Creek, SC to sea.

### **IV. Discussion of the Rule**

This rule establishes a temporary safety zone on January 12, 2023 through January 24, 2023, however the zone will only be enforced while the USNS Gordon is underway with supporting, towing vessels. The moving 100-yard safety zone will be established for the the USNS Gordon and all towing vessels supporting its operations during transit from berth at the Naval Weapons Station, Joint Base Charleston Transportation Core (TC) Dock or Wharf Alpha on the Cooper River in Goose Creek, SC to the Charleston Harbor Entrance Channel Buoy #6. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the dead ship movement of USNS Gordon while transiting the Charleson Harbor area. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders

related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and scope of the safety zone. The zone is limited in size, location, and duration as it will cover all navigable waters of the Cooper River, Charleston Harbor, and Atlantic Ocean at the Charleston Harbor Entrance and Approach within a 100-yard radius of the vessel USNS Gordon and any towing vessels supporting the operation. The zone is limited in scope as vessel traffic may be able to safely transit around this safety zone and vessels may seek permission from the COTP to enter the zone. The zone is limited in duration in that it will be enforced for no more than eight hours. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary, moving safety zone on waters of the Cooper River, Charleston Harbor, and Atlantic Ocean at the Charleston Harbor Entrance and Approach, within a 100-yard radius of the vessel USNS Gordon and all towing vessels supporting its operations until the vessel proceeds seaward of the Charleston Harbor Entrance Channel Buoy #6. This zone is not expected to last more than eight hours. It is categorically excluded from

further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; and Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T07-0039 to read as follows:

#### **§ 165.T07-0039 Safety Zone; Charleston Harbor, Charleston, SC**

(a) *Location.* The following is a safety zone: The moving safety zone will include all navigable waters of the Cooper River, Charleston Harbor, and the Atlantic Ocean at the Charleston Harbor Entrance and Approach, within a 100-yard radius of the vessel USNS Gordon and all towing vessels supporting its operations, while transiting outbound until the vessel proceeds seaward of the Charleston Harbor Entrance Channel Buoy #6.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the safety zone described in paragraph (a) of this section unless authorized by the COTP Charleston or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP Charleston or designated representative.

(2) Persons who must notify or request authorization from the COTP Charleston may do so by telephone at (843) 740-7050, or may contact a designated representative via VHF radio on channel 16.

(d) *Effective and enforcement period.* This section is effective on January 12, through January 24, 2023. The moving zone will be enforced while USNS Gordon and all towing vessels supporting its operations are transiting, until seaward of the Charleston Harbor Entrance Channel Buoy #6.

Dated: January 11, 2023.

John D. Cole  
Captain, U.S. Coast Guard  
Captain of the Port Charleston.

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